

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRENDAN MCKOWN,

Plaintiff,

v.

SIMON PROPERTY GROUP and IPC  
INTERNATIONAL CORPORATION,

Defendants.

CASE NO. C08-5754BHS

ORDER DENYING  
DEFENDANTS' MOTIONS FOR  
SUMMARY JUDGMENT  
WITHOUT PREJUDICE

This matter comes before the Court on Defendants Simon Property Group, Inc. ("Simon") and IPC International Corporation's ("IPC") (collectively "Defendants") motions for summary judgment (Dkts. 139, 163). The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby denies the motions without prejudice for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On November 12, 2008, Plaintiff Brendan McKown ("McKown") filed a complaint against Defendants in Pierce County Superior Court for the State of Washington. Dkt. 2. McKown asserts causes of action against Defendants for premises

1 liability, negligent failure to provide adequate security, negligent performance of duty,  
2 negligent hiring and/or failure to provide security personnel, and breach of contract. *Id.*  
3 On December 17, 2008, Defendants removed the matter to this Court. Dkt. 1.

4 After the entry of summary judgment, an appeal, and the Washington Supreme  
5 Court answering certified questions, the Ninth Circuit remanded the matter for further  
6 proceedings. *See McKown v. Simon Prop. Grp., Inc.*, 182 Wn.2d 752 (2015); Dkt. 114.

7 On May 5, 2016, Simon filed a motion for summary judgment. Dkt.139. On June  
8 15, 2016, IPC filed a motion for summary judgment. Dkt. 163. On July 7, 2016, the  
9 Court granted McKown's motion to compel and extended discovery. Dkt. 172.

## 10 II. DISCUSSION

11 If facts are unavailable to the nonmovant, the Court may deny a motion for  
12 summary judgment. Fed. R. Civ. P. 56(d)(1).

13 In this case, Defendants' motions are based on McKown's failure to produce  
14 sufficient evidence. Under the Court's interpretation of *McKown*, the Court granted  
15 McKown's motion to compel the production of potentially relevant evidence. Dkt. 172  
16 ("the scope of relevant evidence has been broadened to include evidence of Simon's past  
17 experience, the place of the business, and the character of the business."). As such, the  
18 Court concludes that facts are unavailable to McKown to justify an opposition on the  
19 issue of duty. Therefore, the Court denies Defendants' motions without prejudice. At the  
20 appropriate time, Defendants may either renege their motions or file new motions.

**III. ORDER**

Therefore, it is hereby **ORDERED** that Defendants' motions for summary judgment (Dkts. 139, 163) are **DENIED without prejudice**.

Dated this 2<sup>nd</sup> day of September, 2016.

A handwritten signature in black ink, appearing to read "Benjamin H. Settle", is written over a horizontal line.

BENJAMIN H. SETTLE  
United States District Judge